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CITY OF DALLAS

RQ-833

Opinion Con.

January 26, 1995

VIA FACSIMILE (512) 463-2092  
and regular U.S. Mail

Honorable Dan Morales  
Attorney General of Texas  
Price Daniel Building, 7th Floor  
P.O. Box 12548  
Austin, TX 78711

COU  
file # ML-31488-8  
JDH 31488

Re: Open Records Request, Terry G. Stephens

Dear General Morales:

By letter dated January 13, 1995 and received by the Dallas Police Department on January 17, 1995, Terry G. Stephens has made an Open Records request to the Police Department of the City of Dallas. Mr. Stephens' request relates to an ongoing police investigation into the shooting death of George Alonzo Hernandez. Specifically, Mr. Stephens has requested

copies of any and all offense reports/incident reports/accident reports, supplement reports, prosecution reports, statements, affidavits, arrest reports, confessions, drawings, diagrams, photographs, video and/or any other documents, documentation or material related to the listed cases.

This office is responsible for representing the legal interests of both the City of Dallas and the Dallas Police Department. We are requesting not to release this information on numerous grounds.

The investigation, and the request for records, are related to the shooting death of George Alonzo Hernandez on December 25, 1994. According to initial police reports, the deceased was apparently killed after arguing with a known suspect. This case is awaiting trial disposition, and any release of information could jeopardize the State of Texas' case.

As stated below, this office believes that Tex. Att'y Gen. JH-127 (1976) is a previous determination that the requested information falls within one of the exceptions,

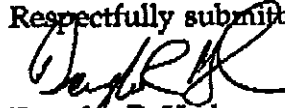
therefore a written request to withhold the information is not necessary pursuant to Section 552.301(a) of the Texas Open Records Act. However, we are requesting your review of the requested information, and approval in not releasing the requested information.

In our opinion, the information requested are records of a law enforcement agency relating to the investigation of a pending criminal case, and should be protected from disclosure under Section 552.108(a) and Section 552.108(b) of the Open Records Act. Release of the requesting materials while an investigation is pending could compromise the investigation. See Memorandum from Deputy Chief of Police Pam Walt, Crimes Against Persons Division, dated January 22, 1995, enclosed. See Tex. Att'y Gen. JH-127 (1976). Texas Attorney General Opinion 127 (1976) specifically provides that much of the requested information, including statements by informants, confessions, identification and descriptions of witnesses, lab tests, and investigator reports are not available to the public. Tex. Att'y Gen. JH-127, p. 4 (1976). Further, Tex. Att'y Gen. DM-127, p.2, (1994) reiterates that in a criminal case under active investigation, "Section 552.108 exempts from disclosure all information except that normally found on the first page of the offense report."

Further, to the extent this request calls for records pertaining to the results of forensic tests, the results should be excluded from disclosure under Section 552.108(a) and Section 552.108(b) of the Open Records Act, and by Tex. Att'y Gen. JH-127 (1976). Tex. Att'y Gen. JH-127 (1976) specifically exempts from disclosure statements by informants, ballistic reports, fingerprint comparisons, blood and other lab tests, paraffin test results, and spectrographic or other investigator reports when a criminal investigation is pending.

This office believes that because Tex. Att'y Gen. JH-127 (1976) & Tex. Att'y Gen. DM-127 (1994) are previous determinations that the requested information falls within one of the exceptions, this information should not be released. Copies of the materials requested to be withheld are being forwarded via regular U.S. Mail.

Respectfully submitted,



Douglas R. Hyde  
Assistant City Attorney  
Criminal Law and Police Division

Enclosures sent via regular U.S. mail.

xc: Terry G. Stephens  
M&M Security Services, Inc.  
1121 Hampshire Lane, Suite 200  
Richardson, Texas 75080

Detra G. Hill  
Assistant City Attorney  
Supervisor, Criminal Law and Police Division

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